



POLICE DEPARTMENT

April 17, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Alexis Jusino
Tax Registry No. 931754
108 Precinct
Disciplinary Case No. 2013-11078

The above-named member of the Department appeared before me on January 9, 2015, charged with the following:

1. Said Police Officer Alexis Jusino, assigned to the 19th Precinct, on or about December 24, 2013, while off-duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Alexis Jusino was involved in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph, 5 – GENERAL REGULATIONS

The Department Advocate's Office was represented by Joshua Kleiman, Esq.
Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that Respondent [REDACTED] Traffic Enforcement Agent (TEA) Person A and that as of December 24, 2013, they resided together, along with Person A's [REDACTED] Person C, in a two-story condominium residence located at [REDACTED] [REDACTED].

On December 24, 2013, Person A was told by a neighbor, Person B, that Person B's daughter had sent provocative photos of herself to Person C on a UBS drive. Person B also told Person A that after Respondent saw these photos he had texted Person B's daughter a message which included the words "nice body." After Person A was told this by Person B, Person A became upset. When Respondent arrived home after performing his tour of duty that day, Person A confronted him while they were alone inside his second floor bedroom. A verbal argument ensued while they were inside the bedroom which escalated to physical contact.

Respondent called 911. The 40 Precinct patrol supervisor, Sergeant Angel Delgado, responded to the residence. Respondent and Person A were transported to the 40 Precinct where they were both arrested and suspended from duty. Their criminal cases were eventually dismissed and Respondent and Person A are now living separately [REDACTED].

The Department Advocate called TEA Person A, Sergeant Angel Delgado, and Lieutenant Alexander Shopiro, and Respondent testified in his own behalf.

TEA Person A

Person A testified that when she confronted Respondent with what Person B had told her, he became defensive, upset, angry, and started shouting at her. As she tried to leave the second floor bedroom, she brushed by him and bumped into him. She then felt "a punch in my face." As she was falling down, she reached out to try to grab onto something and as a result, "I believe I scratched his face." She landed on the bed.

She got up, left the second floor bedroom and walked down the stairs to the living room on the first floor where she began throwing items around because she was emotional and upset. Respondent came downstairs a few minutes later. She began cleaning the living room. Her son told her that Respondent had called the police.

When Delgado arrived, she told him that Respondent had "smacked or punched" her. At the 40 Precinct photos of her face were taken. [Department's Exhibit (DX) 2A and 2B. These two photos depict bruising, redness, and swelling under her left eye.]

Sergeant Angel Delgado

Delgado interviewed Respondent who told him that Person A had "attacked him." Person A told him that Respondent had hit her on her face and that she had fought back to defend herself. Person A alternated in describing this hit as a "punch" or a "slap." Person A told Delgado that the scrape marks on Respondent's face were the result of the fact that she has long fingernails and that she had "back-smacked" him.

Lieutenant Alexander Shopiro

Shopiro inherited this investigation from the Bronx Investigation Unit (BIU). Shopiro confirmed that a photograph of Respondent's face was taken by Sergeant Matto from BIU. [Department's Exhibit (DX) 1. This photo depicts scratch marks on Respondent's right cheek and his forehead].

Respondent

Respondent testified that on December 24, 2013, Person A called him and asked him to leave work early. Respondent was scheduled to work until 8:35 p.m., but he left at 5:35 p.m. As Respondent entered the house, Person A sarcastically asked him, "You think I'm sexy? Do I look good for you?" Respondent walked up the stairs to the bedroom. Person A followed him and continued making comments. She was "very irate" and "very agitated." He was initially unsure as to why she was so angry at him. When Person A finally mentioned that she was upset about "some pictures," Respondent surmised that she was referring to a USB drive that he had found while cleaning out a closet the month before. When he accessed this USB drive he found provocative photos of Person B's daughter who had once been in a relationship with his [REDACTED] Person C. In a text message to Person B's daughter asking her if she wanted the photos returned to her, he had written. "Nice body, laughing out loud."

Respondent testified that Person A's verbal abuse escalated to a physical attack in that she started "slapping me, pushing my face, spitting at me." At one point, he blocked one of her attempts to slap him in that he "mushed her in her face, pushed her towards the bed." He only did this to prevent getting hit by her. Person A threw his laptop computer

and other items. Respondent left the second floor bedroom and went down to the first floor in an attempt to defuse the situation. Person A came downstairs where she continued to throw things. At one point, she struck him on the right side of his face.

On cross examination, he confirmed that he began recording her actions using his cell phone (DX 3). He asserted that he did not know how Person A had incurred bruising under her left eye. He did not see this injury on the night of the incident. He confirmed that in the bedroom, he had pushed Person A and that she landed on the bed.

FINDINGS AND ANALYSIS

Respondent claimed at this trial that he was not involved in a physical altercation with Person A on December 24, 2013. He asserted that a furious Person A had attacked him; that he had merely defended himself by blocking her slaps to prevent getting hit by her; and that his only physical contact with her head was when he “mushed her in her face” with an open hand and “pushed her towards the bed.”

Respondent's claim that he only “mushed” Person A's face is not supported by the photos of Person A's face which were taken soon after this incident (DX 2A and B). Since the bruising, redness, and swelling under Person A's left eye depicted in these photos is consistent with a close-fisted punch, not an open-handed “mush,” Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY2d 222 (1974).

Respondent was appointed to the Department on July 22, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

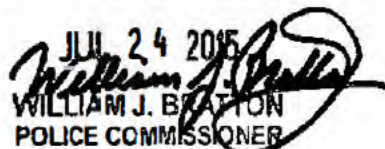
The Assistant Department Advocate recommended that Respondent forfeit the 30 days he has served on pre-trial suspension because this is the penalty that Person A received after she pleaded guilty to engaging in this physical altercation.

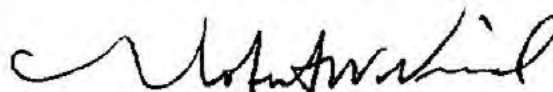
Since this case marks the second time within a five year period that Respondent has been found guilty of being involved in a physical altercation with Person A, and since Respondent has another prior disciplinary adjudication (see attached Confidential Memorandum), I would recommend that Respondent be required to serve one year on dismissal probation were it not for two factors: First, since Person A and Respondent are no longer living together and are [REDACTED], it is unlikely that they will engage in a third physical altercation. Second, in formulating a penalty recommendation I have taken into consideration Respondent's consistently excellent performance evaluations and his impressive Department Recognition Summary.

Therefore, it is recommended that Respondent forfeit the 30 days he served on pre-trial suspension as a penalty.

Respectfully submitted,

APPROVED

JUL 24 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER


Robert W. Vinal
Assistant Deputy Commissioner - Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ALEXIS JUSINO
TAX REGISTRY NO. 931754
DISCIPLINARY CASE NO. 2013-11078

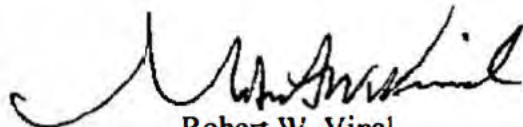
The Respondent received an overall rating of 4.0 on his 2014 annual performance evaluation, 4.0 on his 2013 evaluation, and 4.5 on his 2012 evaluation. He has been awarded six Meritorious Police Duty medals and 14 Excellent Police Duty medals. [REDACTED]

In 2010, Respondent forfeited 25 vacation days after he was found guilty of being involved in a physical altercation with Person A on July 8, 2009, by grabbing her by her hair and throwing her on a couch; being AWOL from his assignment for ten minutes; and using a Department vehicle for personal purposes. He also pleaded guilty to failing to notify his CO that he had changed his address.

In 2011, Respondent forfeited ten vacation days after he was found guilty of requesting the assistance of another MOS to prevent the processing and adjudication of one summons.

Respondent has been placed on Level 2 Disciplinary Monitoring, which is continuing, on two occasions, and on Level 1 Force Monitoring on one occasion.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials